Supreme Court, U.S.
FILED

(1)

No. 02 1471 APR 1 2003

In The

Supreme Court of the United States

OCTOBER TERM 2002

ROBERT JOHN WRIGHT, *Petitioner*,

vs.

BANK OF AMERICA MORTGAGE, *et al.*
and
EMC MORTGAGE CORPORATION,
(a subsidiary of Bear-Stearns)
Respondents.

On Petition For Writ Of Certiorari to The Fifth District Court of Appeals at Dallas, Texas.

PETITION FOR WRIT OF CERTIORARI

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Petitioner- Pro Se

April 1, 2003

33 pp

QUESTIONS PRESENTED

1. Whether U.C.C. Article3 § 3-603(b) and (c), which provides: if a tender of payment is refused, that payment and interest is discharged; prevents mortgage servicers from manufacturing defaults on performing loans by intentionally refusing payments.

2. Whether such actions by mortgage servicers breach the intended purpose of consumer protection laws

3. Were the decisions by the courts below created by the unique first instance of a nationwide mortgage company racketeering scheme of manipulating accounts to create a default?

4. Did the Texas courts deny petitioner's Rights under the Due Process Clause of the Fourteenth Amendment by failing to answer or resolve any of the conflicts between the parties?

LIST OF PARTIES

Petitioner	Counsel
Robert John Wright	Pro Se

Respondents	Counsel
Bank of America Mortgage a/k/a BA Mortgage a/k/a Bank of America	Michael D. Conner Michael Hord Eric Lipper
f/n/a NationsBanc Mortgage a/k/a NationsBank a/k/a NationsBanc	Hirsch & Westheimer Bank of America Tower 700 Louisiana, 25th Floor Houston, Texas 77002-2728 Telephone: (713) 223-5181 Facsimile: (713) 223-9319
EMC Mortgage Corporation (a subsidiary of Bear-Stearns)	Michael J. McKleroy, Jr. Robert F. Maris Maris & Lanier 1450 Meadow Park Bldg., 10440 N. Central Expressway, Dallas, Texas 75231 Telephone: (214) 706-0920 Facsimile: (214) 706-0921

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OPINIONS BELOW

This petition respectfully seeks review of the judgment and opinion of the Fifth District Court of Appeals at Dallas, affirming the judgment of the 380th Judicial District Court of Collin County, Texas, and review of the judicial misconduct of the 380th Judicial District Court of Collin County, Texas, the Fifth District Court of Appeals at Dallas, respondents and respective counsel.

JURISDICTION

The Supreme Court of Texas denied rehearing by notice on January 10, 2003. This petition is filed within ninety days of that date as required by 28 U.S.C. §2101(c). Jurisdiction of this Court is also invoked under 28 U. S. C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.C.C.-Article3-§ 3-603(b) states:

> If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge.

U.C.C.-Article3-§ 3-603(c) reads:

> The obligation of the obligor to pay interest after the due date on the amount tendered is discharged.

The Fourteenth Amendment, Section 1 provides:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Seventh Amendment states:

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

The Fourth Amendment in relevant part:

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable seizures, shall not be violated.

OVERVIEW

This mortgage servicing abuse case is one of first impression and petitioner respectfully prays this Honorable Court will assist in curbing the fraudulent actions currently under government investigation by granting this instant petition.

This case evidences in documented detail, the calculated and clandestine operations intricately designed to extort funds, equity and property from unsuspecting homeowners. This simple *prima-facia* case has been complicated over the years by the continuous misconduct of the respondents, their counsel and collection agents, through unlawful and unethical violations of laws, current regulations and post-judgment events.

It has been irrefutably proven that these and other servicers intentionally miscalculate and alter account figures in order to falsely indicate homeowners in varying degrees of default -- when in fact -- they are not. Servicers intentionally hold or lose date-stamped payments until they are late, then strategically refuse payments or add them to a suspense account while adding unlawful fees, sometimes several times a day, to strip equity and ultimately gain the property through illegal foreclosure. Despite the law requiring the servicer to notify a borrower of additional fees, homeowners are usually not notified of these illegal fees until the foreclosure process has started.

The lower court's abuse of discretion, clear denial of due process, failure to properly review and failure to follow the Rules of Civil and Appellate Procedures as evidenced in the opinion, will allow a foreclosure on a homeowner who never missed a payment. The respondents have continuously failed for six (6) years to provide any court with a scintilla of evidentiary support showing any default.

This odd series of events has made it difficult for homeowners to get others to believe or comprehend the truth. It was only after audits, testimony, investigations and other corporate scandals that an increasing number of government officials, consumer advocates and the media have been forced to recognize this nationwide pattern of abuse is real, well documented and involves an alarming number of homeowners and mortgage servicers.

STATEMENT OF THE CASE

Miscalculations of petitioner's mortgage account created errors in the monthly payment amount and the account balance. A four month audit conducted by Bank of America verified their errors and revealed the account was overpaid. Bank of America then accused petitioner of failing to make one payment in 1997, which was satisfied by the production of the canceled check. One month later, Bank of America threatened petitioner with foreclosure unless he paid $6,200.00. Knowing he did not owe this amount, but tired of the harassment and afraid of losing his home, petitioner sent this amount in certified funds.

Then to insure default, Bank of America refused future payments on an overpaid account, making it impossible to prevent the default and posted the home for foreclosure in May 1998. (Documents revealed Bank of America did not apply the $6,200.00 to the account for thirteen (13) months, during which time they added thousands of dollars in unauthorized fees.)

Bank of America then sold the account to sub-prime lender EMC Mortgage in January, 1999. Initially, EMC began cashing payments and then followed the same deceptive practices passed down from Bank of America by refusing some of the payments, followed by another attempt to foreclose. EMC's intentional refusal to cash monthly payments allowed EMC to begin piling on excessive and illegitimate fees. During this time, EMC accused petitioner of not making two payments in 1996 as indicated in their records. The next day, petitioner faxed copies of the canceled checks along with an extra payment made by mistake, tendered and cashed in 1996, creating additional overage. Petitioner's overage was never returned as required by the mortgage contract.

EMC's 2002 Disclosure Statement shows a pay off balance of $96,000.00, but EMC is currently demanding $187,000.00, for a home purchased sixteen years ago for $139,000.00. EMC is now preparing the third foreclosure without evidentiary support other than unauthorized fees and the tendered payments refused, unless petitioner pays the controversial $90,000.00 in unlawful fees charged to petitioner's account.

REASONS FOR GRANTING THE WRIT

1. THIS CASE WILL SET A NATIONAL PRECEDENT.

The facts established in this case are echoed in a nationwide assembly line of current and forthcoming cases and not confined to the parties involved here. An immediate and desperately needed national precedent is necessary to satisfy public interest in resolving the plethora of complaints against these and other mortgage servicers.

Other unsuspecting victims are now verifying what petitioner has been trying to explain for six years. Current laws and the lack of industry regulations permits portentous individuals and corporations to exploit this unregulated industry by extorting ill-gained profits, creating an influx of similar cases clogging the courts with stunned homeowners forced into bankruptcy protection or illegal foreclosures.

Additional customers of the respondents and customers of other servicers operating with unclean hands, pray this Honorable Court will provide a critical precedent so that justice will prevail and terminate these practices victimizing the nation's homeowners; stripping families of years of hard work to secure their American Dream of homeownership. Any delay will only attribute to the failure of a system designed to fulfill our National Housing Policy; a policy that was instrumental in helping America rebuild after World War II and to keep our economy strong.

2. TO DETERMINE IF U.C.C. ARTICLE3-§ 3-603(b) and (c), PREVENTS MORTGAGE SERVICERS FROM FORCING HOMEOWNERS INTO DEFAULT.

The lower courts refused to address the applicability of U.C.C. Article3-§ 3-603(b) and (c), raised and questioned in petitioner's briefs. Ruling in the affirmative would remove a significant element that is unlawfully forcing homeowners into default and out of their homes. Servicers refusing payments tendered and then adding fees to refused payments, guarantees the homeowner will default, forcing them into foreclosure, violating their Fourth Amendment Right and render them powerless to protect their biggest investment.

3. THE VOLITILE CLIMATE SURROUNDING THIS LIVE ISSUE CREATES A STRATEGIC RIPENESS TO REVIEW.

After learning this scheme was operating in her State of Maryland, Senator Barbara Mikulski demanded an investigation stating: "What they are doing to these people is despicable, and it is absolutely wrong." News stations across the country are reporting identical problems validating every material fact issue established in this case.

Connecticut's proposed HB 5080, will authorize the commissioner of Banking to refer to the Chief State's Attorney any mortgage servicing company that, in the commissioner's opinion, has systematically and flagrantly violated the provisions of subdivision (2) or (3) of this section, for prosecution pursuant to chapter 949c of the general statutes; and that section 53-394 of the general statutes be amended by adding to the definition of "racketeering activity" the systematic and flagrant violation of subdivision (2) or (3) of this section.

Other States are expected to include racketeering and criminal charges for violators following the procedures outlined in this case.

4. THE SHOCKINGLY WRONG DECISIONS OF THE COURTS BELOW CREATED CONFUSION TO THE ESTABLISHED FACTS.

Years of litigation in the courts below failed to resolve any of the issues presented. Petitioner brought numerous causes of action against the respondents including; Breach of Contract/Duty, Unfair and Deceptive Trade Practices, Conversion, Monies Had and Received, Fraud, Mental Torment and Emotional Distress, Loss of Credit Reputation, Unreasonable Collection Practices, Negligence and Harassment. The court not only failed to provide an express ruling on any of the claims, but also ruled without review of the foundational Note and Deed of Trust. Petitioner briefed the lower court's flagrant failures to follow the Rules of Civil and Appellate Procedures, clearly violating the 14th Amendment due process clause. Additional errors include:

The 380th Judicial District Court,

- Granted summary judgment without evidentiary support; three days after respondent filed the motion.
- Thirty-five days before the court reporter's evidence, affidavits and depositions were on file at the court.
- Abruptly denied petitioner's counsel time to respond.
- Ignored respondent's citation to a Supreme Court case that does not exist.
- Signed an order prepared by the respondent regarding respondent's objections, but failed to make an express ruling to indicate whether he desired to grant or deny the objections to petitioner's claims.
- Noted the disposition on the docket sheet as: "Summary Judgment", later altered to read; "Causes Dismissed by Petitioner", for a case on appeal.
- Did not establish any non-compliance by either party.

The Fifth District Court of Appeals,

- Denied petitioner's motion to amend brief in order to comply with TRAP Rule 38 - and other critical changes - and then attacked petitioner's non-compliance to Rule 38.
- Mentioned during oral argument "If there is a mortgage, there must be a contract" but refused to review the contract required to be submitted pursuant to TRAP Rule 38.
- Forced petitioner to appeal to the Supreme Court of Texas without case documentation by unjustly denying petitioner's request to check out the appellate record and request for the oral transcript containing the judicial admissions of opposing counsel.
- Errantly quoted a statement in petitioner's Second Amended Petition purportedly made by petitioner's former counsel that does not exist and is only stated in the respondents briefs.
- Created an opinion wrongly shifting guilt to petitioner, creating confusion to a viewer educated with the facts.

In addition, allowing respondents counsels to willingly, knowingly and intentionally commit fraud upon the court through false and deceptive statements, tarnishes the integrity of the United States judicial system and must not be ignored.

5. THE FIFTH DISTRICT COURT OF APPEALS' OPINION IS CONTRARY TO THE PLEADINGS AND SHOULD BE VACATED.

This issue requires a supervisory power to render a decision cohesive with the majority view of courts in other states. The appellate court's opinion formed a wide variant to similar cases and created confusion and criticism among legal practitioners who reviewed this case and the evidence. The opinion of the appellate court causes the reader to believe that petitioner was at fault.

In the case of *Starks v. EMC* in the Western District Court of Missouri, the arbitrator found EMC's conduct "reprehensible and outrageous and in total disregard of (the Starks') legal rights." (no cit.)

The court in *Wanger v. EMC*, (Cal. App. Sup. Ct. No. 604565-2), wrote a twenty-three page opinion that "remanded to the trial court with directions to vacate its order granting summary judgment in favor of EMC." " Wanger shall recover her costs on appeal."

Maxwell v. Fairbanks Capital (United States Bankruptcy Court, D. Massachusetts - No. 00-14283-JNF, ADV. 00-1568), The judge in this case opined: "Nevertheless, Fairbanks, in a shocking display of corporate irresponsibility, repeatedly fabricated the amount of the Debtor's obligation to it out of thin air. There is no other explanation for the wildly divergent figures it concocted."

In *Meier v. Boatmen's Bank* (n/k/a Bank of America Mortgage), 846 S.W.2d 254; "The court found conflicting facts were obvious with only a casual comparison of the affidavits and depositions of the parties. The court was able to clearly determine that genuine issues of material fact exist in the case, and therefore summary judgment is inappropriate. Judgment reversed, cause remanded."

Higher standards of review in the cases above, created opinions more accurately describing the case at bar, than the appellate court that reviewed this case.

It is interesting to note that the preceding cases and opinions all share one common bond; they all link to Bank of America.

6. THIS CASE MUST UPHOLD THE INTENDED PURPOSE OF CREDIT AND CONSUMER LAWS.

Once the manufactured default is achieved, the homeowner's credit reputation is targeted, preventing the homeowner from refinancing with another lender unless they pay the illegal fees.

Petitioner disputed the debt in April 1997 and provided supporting evidence including Bank of America's own self-admission of their errors. Unable to establish grounds for foreclosure, foreclosure has remained on petitioner's credit report for six years and fails to indicate the debt was disputed.

15 USC Sec. 1692e. (8) states; Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed. (Fair Credit Reporting Act)

Finance Code § 391.002(a): A person commits an offense if the person knowingly furnishes false information about another person's creditworthiness, credit standing, or credit capacity to a credit reporting bureau.

Damaging petitioner's credit prevented any chance of refinancing. Currently, petitioner and other victims cannot refinance without paying tens of thousands of dollars in fees barred by their contract. Reports show the few able to refinance, can later find their mortgage sold back to the same corrupt servicer they paid to get away from.

A brief on the merits will provide this Honorable Court with a detailed account of what corporations are involved, how the scheme operates, who the targets are, who and what is affected, the results and destructive effects the scheme has on the nation's economy and securities, corporate accountability, the psychological and physical health and welfare of families, the effects on future generations and the need to raise judicial discipline and standards of judicial review.

Demanding proof of default would have changed the outcome of this case and prevented six years of irreversible damage to petitioner.

CONCLUSION

For the foregoing reasons, Petitioner prays that this Honorable Court will grant the instant Petition for Writ of Certiorari and upon review, reverse the decisions of the courts below, vacate the opinion of the Fifth District Court of Appeals at Dallas, and respectfully find the due administration of justice requires this national issue be remanded to trial by jury using a *De Novo* standard of review to finally resolve the issues now entering the seventh year.

Further, Petitioner respectfully requests this court support the government's current investigations into the fraudulent practices of mortgage servicers by granting this Writ of Certiorari.

Petitioner prays that truth, integrity and justice can and will overpower corporate corruption, influence and ill-gotten profits and justly protect the Constitutional Rights of the People of these United States.

And finally, Petitioner requests recovery of any and all costs associated with the appeal since its inception on November 1, 2000, to be paid by the Respondents and any other equitable relief this court considers fair and reasonable.

Respectfully submitted,

Robert John Wright
6047 Windbreak Trail
Dallas, Texas 75252
(972) 931-0515

Petitioner / Pro Se

File: 010312F - From documents transmitted: 03/13/2002
Affirmed; Opinion filed March 13, 2002.

In The
Court of Appeals
Fifth District of Texas at Dallas

.....

No. 05-01-00312-CV

.....

ROBERT JOHN WRIGHT, Appellant
V.
EMC MORTGAGE CORPORATION AND NATIONSBANC MORTGAGE CORPORATION, N/K/A B.A. MORTGAGE L.L.C., Appellees

.....

On Appeal from the 380th Judicial District Court
Collin County, Texas
Trial Court Cause No. 380-00150-00

.....

OPINION
Before Justices Morris, Whittington, and Richter
Opinion By Justice Richter

Appellant appeals a no-evidence summary judgment granted in favor of appellees. In six issues, appellant complains that the trial court erroneously granted no-evidence summary judgments in favor of appellees. Appellees argue that the lack of evidence produced in the record supports the trial court's granting of their no-evidence summary judgments. We affirm.

Background

The facts of this matter are known to the parties; therefore, we will briefly recount only a few of the relevant procedural events. After his mortgage company notified him that his payment had increased, appellant sought an audit of his account. Appellant's mortgage company notified appellant that he was in default and began foreclosure proceedings. Appellant brought causes of action against EMC Mortgage ("EMC") alleging wrongful foreclosure, fraud, breach of contract, intentional or negligent infliction of emotional distress, harassment, and incompetence. The trial court granted partial no-evidence summary judgment in favor of EMC upon appellant's

breach of contract and intentional or negligent infliction of emotional distress causes of action, but allowed appellant to continue to claim emotional distress as a source of damages. Thereafter, appellant amended his petition and added Nationsbanc Mortgage N/K/A/ B.A. Mortgage ("B.A. Mortgage"). EMC and B.A. Mortgage filed motions for no-evidence summary judgment. Appellant answered, and EMC filed objections to appellant's summary judgment evidence. The trial court granted appellee's motions for no-evidence summary judgment and signed an order regarding EMC's objections, but failed make an express ruling on the objections. The trial judge's signature appears at the bottom of an order regarding EMC's objections, apparently prepared by EMC, but the judge failed to indicate whether he desired to grant or deny the objections. Appellant appeals the trial court's judgment.

Appellant complains (1) the trial court erred in granting appellee's no-evidence summary judgments, (2) the trial court denied his consumer protection rights, (3) the defendant's failed to establish their entitlement to summary judgment as a matter of law, (4) the trial court failed to consider the credibility of the defendant's evidence, (5) the granting of the no-evidence summary judgment is contrary to the great weight and preponderance of the evidence, and (6) the trial court misled appellant to believe there was going to be a jury trial.

Summary Judgment

A no-evidence summary judgment is essentially a pretrial directed verdict. Therefore, we apply the same legal sufficiency standard of review. *Gen. Mills Rest. v. Tex. Wings, Inc.*, 12 S.W.3d 827, 832-33 (Tex. App.-Dallas 2000, no pet.). Our task as an appellate court is to determine whether the non-movant produced any evidence of probative value to raise a genuine issue of fact on the material questions presented. *Id.* at 833. Although the nonmoving party is not required to marshal its proof, it must present evidence that raises a genuine issue of material fact. *See* Tex. R. Civ. P. 166a (i) cmt. If the non-movant is unable to produce more than a scintilla of probative evidence to raise a genuine issue of material fact, the trial court must grant the motion. *See* Tex. R. Civ. P. 166a (i); *Jackson v. Fiesta Mart Inc.*, 979 S.W.2d 68, 70 (Tex. App.-Austin 1998, no pet.).

Appellant attaches an appendix to his brief in support of his arguments; however, most of the documents contained therein

were not presented to the trial court. It is well settled in Texas that an appellate court's review is confined to the record before the trial court when the trial court acted. *Owens-Corning Fiberglass Corp. v. Malone*, 972 S.W.2d 35, 52 n. 7 (Tex. 1998). Accordingly, we are bound not to incorporate the documents contained in appellant's appendix that were not before the trial court in our review of the trial court's decisions.

Appellant complains in his first point of error that the trial court erroneously granted summary judgment in favor of appellees. Where, as here, a summary judgment does not specify the grounds upon which it was granted, it will be affirmed on appeal if any of the grounds presented are meritorious. *Carr v. Brasher*, 776 S.W.2d 567, 569 (Tex. 1989). EMC filed and was granted a no- evidence summary judgment on appellant's breach of contract claim. B.A. Mortgage moved for no- evidence summary judgment based upon breach of contract, breach of warranty, deceptive trade practices, and common law unreasonable collection practices. EMC then filed a second no-evidence summary judgment motion seeking judgment on the remainder of appellant's claims.

An appellant's brief must concisely state the relevant facts pertinent to the complaint presented and present a clear and concise argument for the contentions made. Tex. R. App. P. 38.1(h). Moreover, rule 38 requires appropriate citation to authorities and the record. Tex. R. App. P. 38.1(f), (h); *McIntyre v. Wilson*, 50 S.W.3d 674, 682 (Tex. App.-Dallas 2001, no pet.). A point not supported by argument and authority is waived. *McIntyre*, 50 S.W.3d at 682.

Although appellant's brief contains citations to authority, appellant fails to direct this Court to any instance where he has brought forth evidence that raises a genuine issue of material fact on any of the elements of his causes of action. Appellant cites this court only to evidence contained in his attached appendix, rather than the record. Moreover, appellant's brief fails to make concise legal arguments disputing the trial court's ruling on any ground except his deceptive trade practices claim. Rather, appellant broadly argues the trial court erred in granting summary judgment. It is not this Court's duty to conduct an independent search of the record to determine whether appellant has raised material fact issues precluding summary judgment on each element of his causes of action. *Most Worshipful Prince Hall v. Jackson*, 732 S.W.2d 407, 412 (Tex. App.-Dallas 1987 , writ ref'd n.r.e.). Appellant has waived his complaints regarding

granting of the summary judgment on any ground except his deceptive trade practices claim. We overrule appellant's first point of error.

Deceptive Trade Practices

Appellant claims on appeal that the trial court "erred by denying appellant his rights under consumer protection laws." However, a review of appellant's second amended petition reveals that appellant, through his attorney, non-suited his deceptive trade practices claims against appellees. Appellant's second amended petition states "Wright has effectively non-suited his DTPA claims by omitting them from his Second Amended Petition." A cause of action is no longer before the trial court when a plaintiff omits a cause of action that was previously included in a prior petition. *Akin v. Santa Clara Land Co., Ltd.*, 34 S.W.3d 334, 339 (Tex. App.-San Antonio 2000, pet. denied). Appellant abandoned his deceptive trade practices claim when he amended his petition and other than the above statement, omitted any reference to it. Accordingly, appellant's second point is overruled.

Burden on Summary Judgment

In his third point of error, appellant contends the trial court failed to require the defendants to establish their entitlement to summary judgment. Appellant's forth point of error complains that "The trial court erred by failing to consider the credibility of the defendant's evidence." In his fifth point of error, appellant attacks the sufficiency of the evidence to support the trial court's granting of summary judgment. Appellant cites this court to authority under Texas Rule of Civil Procedure 166a(c) which requires the summary judgment movant to conclusively establish its entitlement to summary judgment. However, in a no-evidence motion for summary judgment, the nonmovant bears the burden to bring forth sufficient evidence to raise a genuine issue of material fact. Tex. R. Civ. P. 166a (i); *Jackson*, 979 S.W.2d at 70. Moreover, the movant in a no-evidence summary judgment is not required to put forth evidence defeating the nonmovant's causes of action. Tex. R. Civ. P. 166a(i). Accordingly, appellant's points misplace the burden of proof and his points of error must fail. We overrule appellant's third, fourth, and fifth points of error.

In his final point of error, appellant complains the trial court misled him to believe the case would be submitted for a jury trial. We construe appellant's argument to be that he was denied due process of law because his case was disposed of on summary judgment rather than by a jury trial. It is settled law in Texas that the right to a jury trial is not infringed upon when a case is disposed of on summary judgment where no genuine issues of material fact exist. *See Schroeder v. Tex. Pac. Ry. Co.*, 243 S.W.2d 261, 262-63 (Tex. Civ. App.-Dallas 1951, no writ). Appellant's final point of error is overruled. We affirm the trial court's judgment.

MARTIN RICHTER
JUSTICE

Do Not Publish
Tex. R. App. P. 47

File Date[03/13/2002]
File Name[010312F]
File Locator[03/13/2002-010312F]

TRIAL COURT DOCKET SHEET

(Relevant Dates)
Motion for Summary Judgment.....October 27, 2000
ORDER Granting Summary Judgment.....November 1, 2000
Tel. Depo of Bank America.....November 6, 2000
Notice of Intent to Depo Dr. Herndon & Williams.November 16,2000
Deposition of Robert John Wright.....November 27, 2000
Deposition of Betty James.....November 27,2000
Jury Trail Removed.....December 5, 2000
Deposition of Paul Risenhoover.....December 5, 2000
BA Mortgage response to Plantiff.....December 14, 2000

APPENDIX – B

NO. 380-00150-00

ROBERT JOHN WRIGHT	§	IN THE DISTRICT COURT
	§	
VS.	§	
	§	COLLIN COUNTY, TEXAS
EMC MORTGAGE CORP.	§	
NATIONBANC MORTGAGE	§	
n/k/a B.A.MORTGAGE, L.L.C.	§	380TH JUDICIAL DISTRICT

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

On this ___ day of _____, 2000, came on to be considered Defendant, B.A. Mortgage, L.L.C.'s Second Amended Motion for Summary Judgment, and the Court, is of the opinion said Motion should be GRANTED.

It is, therefore ORDERED, ADJUDGED and DECREED that Plaintiff take nothing by reason of his claims against, DEFENDANT, B.A. Mortgage, L.L.C.

SIGNED AND ENTERED on this *1* day of *November*, 2000.

s:/ *Charles Sandoval*
PRESIDING JUDGE

APPROVED AND ENTRY REQUESTED

HIRSCH & WESTHEIMER, P.C.
By: s:/ *Michael Hord*
Michael F. Hord, Jr.
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ATTORNEYS FOR DEFENDANT B.A. MORTGAGE

APPENDIX – C

The Supreme Court of Texas

Post Office Box 12248
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October 10, 2002

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Mr. Robert F. Maris
Maris & Lanier
10440 N. Central Exprwy, Ste. 1450
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RE: Case Number: 02-0568
Court of Appeals Number: 05-01-00312-CV
Trial Court Number: 380-00150-00

Style: ROBERT JOHN WRIGHT
v.
NATIONSBANC MORTGAGE CORPORATION N/K/A B.A. MORTGAGE, L.L.C. AND EMC MORTGAGE CORPORATION

Dear Counsel:

Today, the Supreme Court of Texas denied the petition for review as amended in the above styled case.

Sincerely,
Andrew Weber, Clerk
by *s:/ Jessica L. Vasac*
Jessuca L. Vasac, Deputy

cc: Ms. Lisa Matz, Clerk
Ms. Hannah Kunkle
Mr. Robert John Wright

The Supreme Court of Texas

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January 9, 2002

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RE: Case Number: 02-0568
Court of Appeals Number: 05-01-00312-CV
Trial Court Number: 380-00150-00

Style: ROBERT JOHN WRIGHT
v.
NATIONSBANC MORTGAGE CORPORATION N/K/A B.A. MORTGAGE, L.L.C. AND EMC MORTGAGE CORPORATION

Dear Counsel:

Today, the Supreme Court of Texas denied the motion for rehearing, as amended, of the above styled petition for review.

Sincerely,
Andrew Weber, Clerk
by_s:/ *Gena Pelham*
Gena Pelham, Deputy Clerk

cc: Ms. Lisa Matz, Clerk
Ms. Hannah Kunkle
Mr. Robert John Wright

February 28, 2003: Mortgage Investigation

WBAL-TV Editorial Board

An investigation by our 11 News I-Team this week raises an issue that needs the immediate attention of legislators and regulators -- both here in Maryland and in Washington.

The stories shared by two Maryland homeowners are troubling examples of what can happen when your mortgage loan is sold and the rules of the game suddenly change. One of them could afford to hire lawyers to fight to save his house. The other paid thousands of dollars out of fear to take her house off the auction block.

The issue is how some companies are permitted to operate -- charging excessive fees, holding payment checks, and threatening foreclosure whether or not they really intend to follow through.

Most troubling of all is how little regulation is on the books to protect the borrower.

This has to change. The selling of mortgage loans has made it possible to turn more people into homeowners. That's good for the economy.

But bad business practices destroy consumer confidence.

It's time to plug the cracks that some homeowners are falling through simply because they get stuck with a mortgage company they didn't choose.

March 14, 2003: Mortgage Investigation Expands

WBAL-TV Editorial Board

Two weeks ago, our 11 News I-Team launched an investigation of a mortgage servicing company.

We have been both startled and encouraged by what's happened since. Startled because we've heard from more than a hundred Maryland homeowners and others from around the country who are in a desperate fight to save their homes.

Encouraged, because Maryland Senator Barbara Mikulski quickly stepped to the plate -- demanded, and achieved an investigation by the inspector general of HUD.

What's not so encouraging -- the silence of Maryland's state legislature.

In the course of our investigation, Maryland regulators have

acknowledged weaknesses in their ability to protect homeowners from some of the practices of the companies who service their loans. There was a bill proposed in Annapolis to strengthen those protections but a senate committee shot it down almost as soon as its sponsors put it on the table.

Here's what we propose to state lawmakers -- stop turning your back and hear the alarm sounded by your constituents. Their frustration is only made worse by the apparent failure of state law to help them protect their most important investment.

Feds To Investigate Mortgage Company

U.S. Senator Asks HUD Inspector General To Investigate

POSTED: 6:03 p.m. EST March 6, 2003

UPDATED: 6:32 p.m. EST March 6, 2003

WASHINGTON -- Federal authorities are responding to the complaints of more than 100 Maryland homeowners Thursday. The inspector general for the federal Housing and Urban Development department is launching an investigation of Utah-based mortgage servicing company, Fairbanks Capital.

WBAL-TV 11 NEWS I-Team lead investigative reporter Jayne Miller reported that Sen. Barbara Mikulski, D-Maryland, asked for the investigation during a Senate subcommittee meeting on the HUD's budget. Mikulski's inquiry comes seven days after the WBAL-TV 11 NEWS I-Team investigation first uncovered the way this company operates.

In asking HUD authorities Thursday to investigate Fairbanks Capital, Mikulski cited the WBAL-TV 11 NEWS I-Team investigation of the company.

"We want to know who this company is and what are they doing," Mikulski said in the meeting.

Mikulski first focused on what she calls predatory lending practices several years ago after a WBAL-TV 11 NEWS I-Team investigation revealed the real estate practice known as flipping. Now, she says,

federal authorities must find out if a new scheme is at work. As a result, HUD's inspector general agreed to open the Fairbanks investigation before the budget hearing was over. Mikulski is also working to set up a resource for Fairbanks customers.

"I'm very concerned that consumers have nowhere to go on this issue. We want the inspector general and HUD to establish a hotline, or a one-stop shop for consumers to come and get redress," Mikulski said.

Jean Horn is a Fairbanks customer who is trying to find recourse through her family. Fairbanks claims Horn missed at least one payment, and she said she hasn't. Her son, she said, is trying to buy her house to save it from foreclosure. The problem, according to Horn's daughter, Elsie Lyons, is getting a reliable payoff statement from Fairbanks.

Lyons said she has tried to obtain a payoff statement "at least four times. We've gotten at least four different amounts they're written down everywhere."

In the meantime, Horn's house was scheduled to be sold at an auction Friday. She's avoided it by paying $2,000 now, and agreeing to pay more than $30,000 in a balloon payment at the end of May.

Fairbanks has not responded to WBAL-TV's questions about Horn's mortgage account, but it did issue a statement about Thursday's development's in Washington, saying "Fairbanks will certainly seek to address directly with Senator Mikulski and her staff any concerns she may have about the company's servicing practices.

Homeowners who have a complaint can contact an additional resource, the HUD inspector general's hotline by dialing **(800) 347-3735.**

Sources told WBAL-TV 11 NEWS that two officials from Fairbanks are currently in Baltimore now to meet with Maryland regulators.

Sarbanes Joins Push To Investigate Mortgage Co.

Investigation Under Way, HUD Officials Say

POSTED: 7:05 p.m. EST March 20, 2003

UPDATED: 10:36 p.m. EST March 20, 2003

WASHINGTON – Sen. Paul Sarbanes, D-Maryland, added his voice to the concern over a Utah-based mortgage servicing company and

put new pressure on federal authorities to sort out the company's practices.

WBAL-TV 11 NEWS I-Team lead investigative reporter Jayne Miller reported that Sarbanes, the ranking Democrat on the Senate Banking Committee joined Sen. Barbara Mikulski, D-Maryland, Thursday in responding to the 11 NEWS I-Team investigation into Fairbanks Capital.

Sarbanes, (pictured, right), and Mikulski are publicly pushing the federal Housing and Urban Development Department to intervene on behalf of a long list of homeowners in Maryland and throughout the nation.

Calling the practices of Fairbanks Capital an apparent case of mortgage servicing abuse, Sarbanes added to the pressure on federal regulators to thoroughly examine the complaints of homeowners.

Sarbanes cited the concerns raised by an 11 NEWS I-Team investigation into the fees borrowers are being charged, the repeated threats of foreclosure, and the handling of mortgage accounts.

In response to Sarbanes, the Secretary of HUD cited the investigation now under way by HUD's inspector general. The inspector general, he said, "is already engaged in investigating what appears to be a horrible situation."

Meanwhile, some howeowners report a change in tone in their recent dealings with Fairbanks. Joanna Laslo has been in a three-year dispute with Fairbanks over the handling of her mortgage. On Friday, she told Miller that Fairbanks suddenly seemed willing to compromise -- just before she appeared at a meeting with HUD investigators.

"I got a call from a representative of Fairbanks and he indicated that he would straighten it all out for me. I asked where he'd been for three years. It appears they hear me now," Laslo said.

Last week, the 11 NEWS I-Team shared the stories of homeowners whose property taxes hadn't been paid -- despite having money in their escrow accounts. Both report Thursday that Fairbanks now has paid the bills -- nearly three months late.

Mortgage Co. Orders Moratorium On Foreclosures

WBAL-TV 11 NEWS I-Team Reporter Jayne Miller Reports

POSTED: 5:23 p.m. EST March 10, 2003
UPDATED: 8:40 p.m. EST March 10, 2003

BALTIMORE -- There's new fallout from an exclusive WBAL-TV 11 NEWS I-Team investigation of a Utah-based mortgage servicing company Monday -- and it may give temporary relief to homeowners.

WBAL-TV 11 NEWS I-Team lead investigative reporter Jayne Miller reported that sources told WBAL-TV 11 NEWS that the company -- Fairbanks Capital -- agreed to impose a moratorium on foreclosures in Maryland.

The decision comes 12 days after the start of the 11 NEWS I-Team investigation. Late last week, two company executives met with Maryland regulators in Baltimore. The moratorium, sources said, is the result of the pressure state regulators applied.

The decision should ease the pressure on homeowners like Robert and Hazel Grayson, who received a foreclosure notice from Fairbanks about a week ago -- despite their argument they are not in default on their mortgage payments.

The 11 NEWS I-Team investigation revealed many questions about the way Fairbanks services the loans of homeowners -- from the fees the company charges to the foreclosure threats that many homeowners say are made without accurate documentation.

Just last week, Sen. Barbara Mikulski, D-Maryland, pressured the federal Housing and Urban Development Department to investigate the company.

The company did not return Miller's calls for comment Monday.

Sources said the moratorium will remain in place until the company answers questions posed by Maryland regulators.

The state's administrative investigation, sources said, has escalated beyond resolving individual cases to a comprehensive examination of the pattern of homeowner complaints.

11 News Investigates Fairbanks Capital's CEO

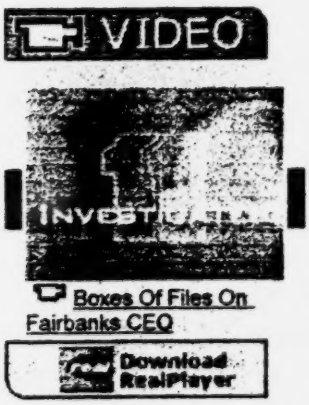
Mortgage Company Still Under Investigation

POSTED: 7:39 a.m. EST March 28, 2003
UPDATED: 8:27 a.m. EST March 28, 2003

BALTIMORE -- Our 11 News I-team opens a new chapter in our ongoing investigation of a Utah-based mortgage servicing company. Over the past month, our investigation has led federal and state regulators to examine the practices of Fairbanks Capital. Hundreds of homeowners -- here in Maryland and around the country -- complain of excessive fees, inadequate documentation and threats of foreclosure.

Now we focus on the man behind the company. Our exhaustive research reveals a link to the past and a huge federal case that nabbed one of the biggest swindlers of all time.

Here's I-team lead investigative reporter Jayne Miller.



His name is Thomas Basmajian. He is the chief executive of Fairbanks Capital -- the mortgage servicing company now under investigation by HUD's inspector general. In a corporate filing, Basmajian describes himself as a former owner of Basmajian Brothers -- a California concrete company -- and corporate officer of a licensed securities dealer. In fact, we've uncovered much more about Basmajian's background buried in six boxes of a federal case now housed in the National Archives.

It is a case that centers on this man -- John Peter Galanis -- a notorious white collar criminal who made headlines in the late 1980's when his organization was put on trial for bilking hundreds of millions of dollars from investors and the U.S. Government in tax shelter schemes.

John Klotz, Attorney -- "People got hurt."

John Klotz is a New York lawyer who represented investors who sued Galanis.

Klotz -- "One of the keys to Galanis' success was his ability to create a house of cards, almost fictitious financial instruments."

Basmajian was not charged in the Galanis case. But our review of

documents from the case and 9000 pages of court testimony reveal Basmajian's connection to Galanis' deals.

It starts with a company called Churchill Oil and Gas, formed in 1981 by Doug Adams -- a one-time restaurant operator in California -- and Basmajian.

According to Adams' testimony in court: "(he) and Basmajian formed Churchill in 1981 -- specifically to work with (another man) and John Galanis in the Transpac drilling ventures." Transpac was the name of the tax shelters that the government later declared a total sham.

Greenwich, Conn. was Galanis' base. He lived in this secluded multi-million dollar mansion and did business in several office buildings here.

Court testimony reveals Basmajian was at the table with Galanis when the Transpac deals were launched in Greenwich. Testimony also reveals Basmajian was an apparent insider in the deals -- close enough to the inner circle that he was able to get a piece of the tax shelters pie without having to pay.

In 1983, Basmajian was involved in starting a new company -- called Churchill Investment Corporation. It was a licensed securities dealer. According to testimony in court, it was intended to make the tax shelter program more attractive to investors.

Galanis himself testified: "I spoke to Tom Basmajian in the early fall of 1983. That Churchill could -- as a broker dealer -- help facilitate the Transpac program in being able to offer this particular feature to investors."

WBAL-TV 11 News reporter Jayne Miller: "A lawyer for Galanis -- who testified against him as a part of plea bargain in the federal case -- tells 11 News Churchill Investment was formed to sell Galanis' deals."

Doug Adams -- Basmajian's partner -- says he was also involved in Churchill Investment but got out by the end of 1984. The reason: he says Galanis wanted him to get involved in a another venture, and Churchill Investment had apparently drawn the interest of the securities exchange commission.

In September of 1987, Galanis and seven of his associates were indicted by a federal grand jury in New York. By that time, Galanis' schemes were linked to the failure of several banks and the raiding of a mutual fund.

As the case went to trial in White Plains, New York, the federal prosecutor described it this way: "This is an organization who's

M.O. was fraud, whose very activities were corrupt, whose appetite for money was voracious, whenever more money was needed, more victims were sought."
"All of the defendants, as well as others were members of a thoroughly corrupt, criminal organization which defrauded investors, banks, mutual funds, shareholders and the U.S. Government."
Galanis was convicted and sentenced to 27 years in prison -- one of the toughest white-collar criminal sentences ever in the country.
Doug Adams, Tom Basmajian's partner, was among a dozen other men in the case who pleaded guilty or was convicted on related charges.
Untouched by the prosecution of Galanis and Adams, Basmajian himself went on to form Fairbanks Capital Corporation a year later in 1989. In these documents, filed in the state of Texas, Basmajian makes no mention of Churchill Oil and Gas and describes Churchill Investment as a licensed brokerage that closed in 1987 due to a decline in real estate partnerships.
Left out of that description -- the story of both Churchill companies that is contained in thousands of pages of federal court documents.
Miller: "Basmajian would not consent to an on camera interview for this story. A spokesperson who did want to be named, instead issued this statement on behalf of Basmajian:
"Tom Basmajian, like many others, he said, was a victim of the fraudulent investment scheme perpetrated by John Galanis in the early 1980's. Mr. Basmajian and his firm, also like many others, suffered significant losses as a result of the Galanis' affair. It is pointless today to rehash the events that occurred 20 years ago."
The spokesperson would not answer any specific questions about what Basmajian may have known about the Galanis organization.

Legal Advocates To Examine Mortgage Cases

WBAL-TV 11 NEWS I-Team Reporter Jayne Miller Reports

POSTED: 4:44 p.m. EST February 28, 2003
UPDATED: 8:24 a.m. EST March 24, 2003

BALTIMORE -- Legal advocates in Baltimore want to examine complaints made against a Utah-based mortgage service company. And the WBAL-TV 11 NEWS I-Team investigation is turning up new details.

WBAL-TV 11 NEWS Lead I-Team reporter Jayne Miller reported that 11 NEWS I-Team investigation has revealed little regulation of the practices of mortgage service companies -- which is why homeowners around the country have sought recourse in the courts.

In response to the 11 NEWS I-Team report, a Baltimore organization wants to take on the case.

"If people are actually facing foreclosure and eviction, a legal route may be the first thing we try to do," said Diane Cipollone, who is with the Community Law Center, a nonprofit legal advocacy group in Baltimore.

As a result of the growing number of complaints about Fairbanks Capital, the law center is now considering seeking a court injunction against the company until its mortgage servicing practices can be thoroughly examined.

"I think an injunction would be the best route for the immediate, to help families right now, very soon," Cipollone said.

The law center will examine the complaints of homeowners like Celita Nash, who paid Fairbanks $6,000 in January to avoid foreclosure without, as she said, "ever knowing what she was paying for."

When asked why she paid the money, Nash said, "I didn't want to lose my house. I have been here so long, this is my home. I just didn't want to lose it."

And property owner Jasann Brewer and her husband face foreclosure next week -- unless they pay $4,100. The last two payments the Brewers made to Fairbanks were returned uncashed.

"It was better for them to put me in default than to take a payment," Jasann Brewer said.

"If we see, for example, we do have stable middle-class families that have equity in their homes, and they're being targeted because this loan servicer believes, 'Oh they'll be frightened, and they will come up with $2,000'," Cipollone said.

Many homeowners in Maryland, and around the country, question Fairbank's record keeping. On Friday, we obtained a letter Fairbanks

sent to one homeowner on the Eastern Shore in which the company admitted it had misapplied the monthly payment.
The letter also shows how the company's accounting mistake had a broader impact -- it had caused a delinquent status to be reported to credit agencies," Miller reported.
In the past day-and-a-half, WBAL-TV 11 NEWS has received complaints about Fairbanks Capital from homeowners in the Baltimore-area. The company services nearly 600,000 loans nationwide.